



King County Board of Ethics
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KING COUNTY BOARD OF ETHICS MEETING NOTICE

When: Monday, October 18, 1999 at 4:30 p.m.

Where: Executive Conference Room, 4th floor
King County Courthouse
516 Third Avenue, Seattle

NOTE DIFFERENT LOCATION FOR MEETING

AGENDA

1. ***Approval of Agenda.***
2. ***Approval of Minutes of Special Meeting of October 9, 1999.***
3. ***Discussion of Appeal Hearing Procedures.***
4. ***Discussion of Draft Responses to Questions about Solicitations from Councilmembers and Possible Changes to the King County Ethics Code.***
5. ***Report from Staff***
6. ***Board Appointments***
7. ***Additional and New Business***

cc: Ron Sims, King County Executive
King County Councilmembers
Duncan Fowler, Director–Ombudsman, Office of Citizen Complaints
Sheryl V. Whitney, Director, DIAS
James J. Buck, Deputy Director, DIAS
Carl A. Johansen, Senior Deputy Prosecuting Attorney

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Minutes of the October 18, 1999 Meeting of the King County Board of Ethics

The October 18, 1999, meeting of the King County Board of Ethics was called to order by Chair Price Spratlen at 4:35 p.m. Board members in attendance were:

Dr. Lois Price Spratlen, Chair
Mr. Roland H. Carlson
Rev. Paul F. Pruitt

Others in attendance:

Ms. Leslie Leber, Temporary Assistant, King County Board of Ethics
Mr. Carl A. Johansen, Senior Deputy Prosecuting Attorney
Mr. Duncan Fowler, Ombudsman
From the King County Council staff:
Ms. Jeanne Keenan
Mr. Jeff Slayton
Mr. Mike Alvine
Mr. John Chelminiak
From the Executive Office Staff:
Mr. Tim Hatley

The chair invited everyone to introduce them selves before the start of business.

1. *Proposed Agenda.* Mr. Carlson moved the approval of the proposed agenda; Rev. Pruitt seconded the motion and the agenda was approved.

2. *Approval of Meeting Minutes of October 9, 1999.* Rev. Pruitt moved to approve the October 9, 1999 special meeting minutes; Mr. Carlson seconded the motion, and the minutes were approved.

3. *Discussion of Appeal Hearing Procedures.* Mr. Johansen reminded the Board that at the previous meeting, he had distributed copies of a memorandum in which Chair Price Spratlen had designated Board member Lem Howell to serve as Presiding Officer for the Appeal Hearing on Ethics Complaint 9810-001E. He informed the Board that that designation could be either approved or overturned at this meeting.

Rev. Pruitt moved the approval of Mr. Howell as Presiding Officer. Mr. Carlson seconded the motion, and the motion carried.

Mr. Johansen informed the Board that all further communications regarding the appeal will be handled by Mr. Howell, and that Board members should refrain from discussing the issue with either party.

Mr. Johansen distributed a summary of the appeal procedures and reviewed actions taken to-date. He noted that the next step could be a pre-hearing conference if requested by the Ombudsman or the employee. Mr. Howell, as Presiding Officer, will determine whether or not to hold a pre-hearing conference. The pre-hearing conference would allow both parties of the appeal to show evidence, discuss disputed evidence, and simplify any issues before the actual hearing. A pre-hearing conference would usually be conducted with the Presiding Officer only, but could include Board members as well.

Mr. Fowler noted that he had mailed a request for a pre-hearing conference to Mr. Howell, care of the Board of Ethics, on Friday, October 15, 1999.

Chair Price Spratlen asked what the timeline would be for a board decision after the hearing. Mr. Johansen noted that the rules of procedure call for a decision of the board within a reasonable time, giving the board time to review and discuss the issues after the hearing. Regarding the date of the hearing, he noted that if there is no pre-hearing conference, then the hearing must be held within 45 days of the request. If there is a pre-hearing conference, then the hearing must be held within 30 days of the pre-hearing conference.

4. *Discussion of Draft Responses to Questions about Solicitations from County Councilmembers and Possible Changes to the King County Code of Ethics.* Mr. Johansen informed the Board that, given the short time between the October 9, 1999 special meeting of the Board and today's meeting, the materials delivered to Board members last week for discussion today were solely his work, as he had had no time for review with Mr. Slayton and others who had attended the October 9 special meeting.

Discussion began with the Board reviewing the "Clarification to Councilmembers" draft document. Mr. Johansen reminded the Board that this is an informational piece intended to assist discussion by the Board, not intended as an official response to the Councilmembers.

There was a brief discussion of Assumptions 1-4, and some disagreement about how to interpret Assumptions 5 and 6. Ms. Keenan said that Assumption 2 did not apply to Questions 5 and 6 because state law did not allow use of public resources for political activities. Mr. Slayton said he thought the Board at its special meeting on October 9, 1999 agreed to assume that the solicitation activities might and might not involve the use of public resources. Mr. Carlson said he would like to have written materials identifying the types of charitable organizations covered under chapter 19.09 RCW and § 503(c) and (d) of the Internal Revenue Code.

Mr. Carlson moved that the Board proceed with discussion using Assumptions 1-4, and return to Assumptions 5 and 6 at a later time. Rev. Pruitt seconded the motion and the motion carried.

Discussion moved to Question 1. There was discussion of the "appearance of" as used in the response to Question 1. It was noted that "appearance of" appears in the Code only with regard to conflict of interest. In other cases, it has been a Board interpretation used in Advisory Opinions. It was further noted that "appearance of" is a fairly common interpretation used by other ethics organizations/boards.

Further discussion focused on the language of "induce" and "coerce." Some in attendance felt that these were strong words, and that it would be inappropriate for an elected official to "induce or coerce" a donation. Others interpreted "induce" as providing an opportunity and not necessarily as an arm-twisting mechanism; whereas "coerce" seemed to indicate a stronger appeal and more along the lines trying to do something against their will.

It was generally agreed that it would be difficult to make the Code clear enough so elected officials will know exactly what they can and cannot do. However, there was interest from the Board in clarifying the Code enough to set basic standards by which elected officials could be guided.

It was of further interest to the Board to allow elected officials to engage in civic activities as they see fit. It was noted that, for instance, an elected official soliciting donations for an election campaign benefits more personally than when that same elected official solicits donations for a charitable organization. Mr. Slayton felt that it would be incongruous, then, to allow elected officials to solicit for their own campaign, but not for a charity.

In addition, it was noted that it is likely that elected officials soliciting donations for a charitable organization may not ever know who donated to that organization and how much they donated.

Mr. Johansen referred the Board to the discussion in the materials about the opinions of the Washington State Legislative Ethics Board and City of New York Conflicts of Interest Board. He indicated the draft response was based, in part, on the “active” and “passive” methodology used in the New York opinions.

The Board looked at objective factors to help determine whether there was an appearance of a conflict of interest due to solicitation activities, as suggested on page 8 of the draft response. Mr. Carlson cautioned that use of the factors could make it appear that a Councilmember had a conflict of interest even if the Councilmember had not been influenced either to favor or not favor a person who had donated and subsequently had an interest in a matter coming before the Council. Mr. Carlson said that elected officials are expected to participate in community and civic activities; they should be free to do so subject to applicable laws and approval by the voters at reelection time. The Board and Mr. Fowler voiced agreement that guidelines would be helpful if added to the Code.

Mr. Johansen pointed the Board to Advisory Opinion 1005 in which the Board determined that County employees may solicit donations on their own time with their own resources. He said the Board included cautionary comments in Opinion 1005 about the future impacts on the employee’s ability to perform their official duties if a person the employee had solicited subsequently has business with the county in an area in which the employee is responsible or participates. In that opinion, the Board reminded employees that they must notify their supervisors in the event of a potential conflict of interest.

There was discussion about drafting an Advisory Opinion to provide guidance to elected officials regarding solicitations, but it was determined that changes to the Code would also be needed in order to fully accomplish what the Board thinks would be appropriate conduct for elected officials. Mr. Slayton stated the Council would like to see the Board express needed changes to the Code regarding this issue.

Rev. Pruitt moved that the Board ask Mr. Johansen to prepare modifications to the Code to allow elected officials to engage in solicitations for donations on behalf of charitable organizations without being in violation of the Code. Mr. Carlson seconded the motion, and the motion passed.

Discussion of Question 2.

Mr. Carlson moved that the Board agree with the summary response to question 2. Rev. Pruitt seconded the motion and the motion passed.

Discussion of Question 3.

Mr. Johansen said it was his understanding from the Board’s discussion on October 9, 1999 that Board members concluded there was a difference between donating a tangible item (e.g., an autographed baseball) and donating time with an elected official (e.g., lunch) for auction or sale to support charitable organizations. He said a Board member had asked how Seattle elected officials could donate time without violating the Seattle ethics code. He pointed out that in a discussion with the Executive Director of the Seattle Ethics and Elections Commission, he learned that the City allows donations by elected officials of such items as lunch or dinner with that elected official. He said the Seattle Commission has not concluded that donation of personal time by an elected official would be considered as appearing to induce or coerce someone to make a contribution to a charitable organization. He said the Seattle Commission’s Executive Director agreed it was possible such donations

could result in potential conflicts of interest in the future but as far as she knew, that issue had never been raised with the Seattle Commission.

Chair Price Spratlen expressed a desire to have the Code provide allowances for such donations by elected officials. The Board asked Mr. Johansen to seek ways to make such donations possible, either through changes to the Code or revisions to existing advisory opinions.

Rev. Pruitt moved that the Board agree with the summary response to question 3 but with the understanding that proposed amendatory actions to allow such donations would be presented to the Board. Mr. Carlson seconded the motion and the motion passed.

Chair Price Spratlen noted the time, and advised the Board that discussion would continue with Question 4 at the next regular meeting.

Mr. Johansen informed the Board that the Council approved the ordinance to change sections of the Code related to Financial Disclosure. Drafts of new Financial Disclosure forms are being reviewed and will be brought to the Board for approval in November. In addition, criteria for determining additional employees who will be required to submit disclosure statements will be presented to the Board at its meeting in November.

It was further noted that the motion to appoint Dr. Margaret T. Gordon to the Board of Ethics moved from the Council to Committee and is pending.

At 6:45 p.m., Mr. Carlson moved to adjourn the meeting. Rev. Pruitt seconded the motion. The motion was approved and the meeting was adjourned.

Approved this ____ day of _____, 1999 by the King County Board of Ethics.

Signed for the
Board: _____

Dr. Lois Price Spratlen, Chair